

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**



FILED
11-07-16
04:59 PM

Order Instituting Investigation into the
State of Competition Among
Telecommunications Providers in
California, and to Consider and Resolve
Questions raised in the Limited Rehearing
of Decision 08-09-042

I. 15-11-007
(filed November 5, 2015)

**OPENING COMMENTS OF THE GREENLINING INSTITUTE AND THE CENTER
FOR ACCESSIBLE TECHNOLOGY ON PROPOSED DECISION**

Melissa W. Kasnitz
Legal Counsel
Center for Accessible Technology
3075 Adeline Street, Suite 220
Berkeley, CA 94703
510.841.3224 x2019
mkasnitz@cforat.org

Paul Goodman
Senior Legal Counsel
The Greenlining Institute
1918 University Ave
Berkeley CA 94704
paulg@greenlining.org
510.898.2053

Dated: November 7, 2016

TABLE OF CONTENTS

I. THE PROPOSED DECISION WOULD BENEFIT FROM INDIVIDUAL SPECIFIC FACTUAL FINDINGS REGARDING COMMUNITIES OF COLOR, TRIBAL CUSTOMERS, AND CUSTOMERS WITH DISABILITIES.....	2
A. The Commission Should Modify the Proposed Decision’s Findings of Fact to More Clearly Distinguish between Availability Issues and Affordability Issues...	3
B. The Commission Should Modify the Proposed Decision’s Findings of Fact to Acknowledge that Tribal Consumers are Uniquely Affected by the Digital Divide.	3
C. The Commission Should Modify the Proposed Decision’s Findings of Fact to Acknowledge that Consumers with Disabilities are Uniquely Affected by the Digital Divide.....	4
II. THE PROPOSED DECISION SHOULD PROVIDE FOR MEANINGFUL INTERVENOR PARTICIPATION IN DATA GATHERING, MONITORING AND REPORTING ON THE MARKET.....	5
III. THE PROPOSED DECISION SHOULD PROVIDE MORE SPECIFIC “NEXT STEPS” TO ADDRESS THE IDENTIFIED PROBLEMS	7
A. The Proposed Decision accurately identifies multiple areas of concern regarding the state of competition in the telecommunications marketplace.	7
B. The Proposed Decision does not adequately set out a process for addressing the identified concerns.	9
1. The Proposed Decision Should Provide for Increased Transparency Regarding the Communications Division’s Ongoing Monitoring and Reporting.....	9
2. The Proposed Decision Should Be Revised to Authorize a Second Phase or Successor Proceeding to Respond to the Failures Identified in this Investigation.	10
IV. CONCLUSION.....	12

TABLE OF AUTHORITIES

CALIFORNIA STATUTES

Public Utilities Code section 216	10
Public Utilities Code section 233	10
Public Utilities Code section 234	10
Public Utilities Code section 451	8, 9, 10

CALIFORNIA PUBLIC UTILITIES COMMISSION DECISIONS AND RULINGS

D.13-02-023, D.15-08-041 (August 31, 2015)	6
Scoping Memo and Ruling of the Assigned Commissioner and Administrative Law Judge , Order Instituting Investigation into the State of Competition Among Telecommunications Providers in California, and to Consider and Resolve Questions raised in the Limited Rehearing of Decision 08-09-042 (November, 5, 2015)	9, 11

CASES

<i>Order re Summary Judgment, New Cingular Wireless PCS LLC v. Picker</i> , No. 16-cv-02461-VC, 2016 (N.D. Cal. November 3, 2016)	6
--	---

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Order Instituting Investigation into the
State of Competition Among
Telecommunications Providers in
California, and to Consider and Resolve
Questions raised in the Limited Rehearing
of Decision 08-09-042

I. 15-11-007
(filed November 5, 2015)

**OPENING COMMENTS OF THE GREENLINING INSTITUTE AND THE CENTER
FOR ACCESSIBLE TECHNOLOGY ON PROPOSED DECISION**

In accordance with the Commission's Rules of Practice and Procedure and the Proposed Decision Analyzing the California Telecommunications Market and Directing Staff to Continue Data Gathering, Monitoring and Reporting on the Market (Proposed Decision) issued on October 18, 2016, the Center for Accessible Technology (CforAT) and The Greenlining Institute (Greenlining) jointly submit these Opening Comments.

Greenlining and CforAT strongly support the Commission's investigation and recognize the hard work and dedication of the Commission and its staff to facilitate the success of this proceeding in the face of substantial obstruction by the carriers. Greenlining and CforAT also appreciate this opportunity to provide comments on a broad range of issues in support of the general understanding that, as the California telecommunications marketplace continues to evolve, it is critical for the Commission to continually review the state of competition and the marketplace and act when necessary.

Greenlining and CforAT generally support the conclusions of the Proposed Decision regarding the state of competition in the telecommunications marketplace today. However, Greenlining and CforAT respectfully suggest that the Commission make several modest

modifications to that Decision to clarify (1) the fact that different subgroups of the California population face different barriers that limit their ability to adopt advanced telecommunications services, and (2) the important role that intervenors have in assisting the Commission in gathering data, monitoring the actions of carriers and consumers, and reporting on the market. Additionally, the Commission should more clearly set out its plan to move forward consistent with its jurisdiction and statutory obligations to act in cases of market failure, such as those that have been identified through this investigation.

I. THE PROPOSED DECISION WOULD BENEFIT FROM INDIVIDUAL SPECIFIC FACTUAL FINDINGS REGARDING COMMUNITIES OF COLOR, TRIBAL CUSTOMERS, AND CUSTOMERS WITH DISABILITIES.

Greenlining and CforAT appreciate the Proposed Decision's acknowledgment that consumer subgroups, particularly communities of color,¹ tribal customers,² and customers with disabilities,³ experience significant barriers in obtaining access to advanced telecommunications services.⁴ However, as the Proposed Decision acknowledges, the barriers faced by these population subgroups are not all the same. Because the barriers differ, the needs of these population groups for future action also differ. In order to properly consider the state of the market and the needs of these different consumer groups, the Proposed Decision should provide additional clarity on the various barriers.

¹ Proposed Decision at pp. 157-158, Finding of Fact 10.

² *Id.*

³ *Id.* at p. 157, Finding of Fact 7(c).

⁴ *Id.* at pp. 157-158, Finding of Fact 10.

A. The Commission Should Modify the Proposed Decision’s Findings of Fact to More Clearly Distinguish between Availability Issues and Affordability Issues.

The Proposed Decision identifies a major market failure in California: the fact that “many low income consumers would like to have a home broadband connection, but the high cost of the service keeps them from adopting.”⁵ The Proposed Decision further notes that “there are different gaps in the market for rural/tribal customers than there are for low income customers,”⁶ and continues: “while rural and tribal customers face an availability gap -- the lack of services deployed to their residence -- low-income customers face an affordability gap -- while services are available, low income customers cannot afford high speed services and are often unable to choose both a mobile subscription and a high-speed residential subscription.”⁷ Greenlining and CforAT agree that each of these customer segments, rural, tribal, and low income customers, face barriers to adoption, and further agree that there are distinct differences between issues of availability and affordability. Accordingly, Greenlining and CforAT respectfully request that the Commission amend the Proposed Decision to include separate Findings of Fact discussing the state of the market for rural, tribal, and low income communities. Greenlining and CforAT propose language for such separate Findings of Fact as Appendix A to these Comments.

B. The Commission Should Modify the Proposed Decision’s Findings of Fact to Acknowledge that Tribal Consumers are Uniquely Affected by the Digital Divide.

The Proposed Decision recognizes that tribal customers face obstacles in obtaining advanced service and are often disparately impacted by the digital divide, **even as compared to rural customers**. For example, the Proposed Decision notes that eighty-six percent of

⁵ *Id.* at pp. 136-137, quoting testimony of TURN witness Dr. Trevor Roycroft. The Proposed Decision then continues, stating: “Dr. Roycroft sees the resulting digital divide as a ‘major market failure,’ and we agree.” Proposed Decision at p. 137.

⁶ *Id.* at p. 137.

⁷ *Id.* at p. 137.

households in tribal blocks have access to zero high-speed mobile providers, compared to eighty-three percent of households in rural blocks.⁸ Seventy-eight percent of California's rural population live in a census blocks with three or more voice providers, while just seventy percent of California's tribal population lives in a census block with three or more providers.⁹

As a discrete group, tribal customers may have specific concerns/barriers impacting availability of advanced services and thus adoption. For example, as part of deployment on tribal lands, issues of tribal sovereignty may arise. Such unique issues are in addition to the issues that face other rural customers, resulting in meaningful differences between those groups. Accordingly, the Commission should amend the Proposed Decision to include separate Findings of Fact for rural communities and tribal communities.

C. The Commission Should Modify the Proposed Decision's Findings of Fact to Acknowledge that Consumers with Disabilities are Uniquely Affected by the Digital Divide.

The Proposed Decision notes that "[m]obile service is not a substitute for fixed landline service among various consumer groups," and that many consumers with disabilities have fewer competitive options in the telecommunications market than other Californians due to the inadequacy of mobile service to meet their telecommunications needs.¹⁰ Greenlining and CforAT agree. However the Proposed Decision's Findings of Fact do not acknowledge that the failure of mobile service to meet the needs of consumers with disabilities contributes to the digital divide. Greenlining and CforAT respectfully request that the Commission clarify the Proposed Decision by including specific language in the Findings of Fact acknowledging that consumers with disabilities are uniquely affected by the digital divide.

⁸ *Id.* at p. 12.

⁹ *Id.* at 69-70

¹⁰ *Id.* at p. 157, Finding of Fact 7(c).

II. THE PROPOSED DECISION SHOULD PROVIDE FOR MEANINGFUL INTERVENOR PARTICIPATION IN DATA GATHERING, MONITORING AND REPORTING ON THE MARKET.

Greenlining and CforAT support the Proposed Decision's commitment to continue working to "promote competition and reduce barriers to entry"¹¹ through a combination of continued oversight¹² and data collection.¹³ Specifically, the Proposed Decision requires carriers to continue to submit various reports to the CPUC,¹⁴ and it requires the CPUC's Communications Division to prepare a report by December 1, 2019 providing an updated analysis of various aspects of voice and broadband service in California and to pursue a third-party survey of broadband speed experienced by customers.¹⁵ Greenlining and CforAT particularly appreciate the Proposed Decision's requirements that (1) providers submit subscriber, availability, and infrastructure data to the Commission and (2) Commission staff prepare reports analyzing that data. Given the importance of this data and analysis, Greenlining and CforAT also respectfully request that intervenors be provided with access to the data and reports, consistent with state and federal law and the Commission's practices.

Intervenors should have access to subscriber data that are the subject of Ordering Paragraphs 1 and 2. Providers' opposition to intervenors obtaining provider data in this proceeding went far beyond providers' opposition in other proceedings. As Greenlining and CforAT have previously argued, intervenors including Greenlining and CforAT should have access to this data so that they can fully and efficiently advocate on behalf of the communities they represent before the Commission. Issues regarding the Commission's authority to make this information available to intervenors has been largely resolved, by order of the U.S. District Court

¹¹ *Id.* at p. 150.

¹² *Id.* at pp. 151-152.

¹³ *Id.* at pp. 153-154.

¹⁴ *Id.* at p. 163, Ordering Paragraphs 1 and 2.

¹⁵ *Id.* at pp. 163-164, Ordering Paragraphs 3 and 4.

for the Northern District of California, which recently ruled in a proceeding brought by carriers to address data collection in this Commission proceeding. The Court's order states that "[f]ederal law does not preempt state commissions from requiring, under an appropriate protective order and in connection with a regulatory proceeding, disclosure of subscription data to parties participating in that proceeding."¹⁶

Similarly, intervenors should have access to the reports that will be prepared in accordance with Ordering Paragraphs 3 and 4, with this right to access clearly stated in the Ordering Paragraphs. This is necessary because staff reports are not always available to all stakeholders. Greenlining and CforAT have experienced situations where they are unable to obtain staff reports that were ordered by the Commission, and in some instances, intervenors have been unable to even obtain confirmation that required reports have been completed.¹⁷ Because of the importance of the reports ordered in this proceeding to allow ongoing consideration of the state of the telecommunications market in California, Greenlining and CforAT respectfully request that the Proposed Decision require that intervenors be provided with access to the reports that are the subject of Ordering Paragraphs 3 and 4.

Greenlining and CforAT propose language for modifying Ordering Paragraphs 1-4 as Appendix A to these Comments.

¹⁶ Order re Summary Judgement, *New Cingular v. Picker*, Case No. 16-cv-02461-VC (November 3, 2016).

¹⁷ For example, in the Commission's Service Quality Proceeding (R.11-12-001), the Commission ordered an infrastructure study, but throughout the intervenors found it extremely difficult to discover the status of that study.

III. THE PROPOSED DECISION SHOULD PROVIDE MORE SPECIFIC “NEXT STEPS” TO ADDRESS THE IDENTIFIED PROBLEMS

A. The Proposed Decision accurately identifies multiple areas of concern regarding the state of competition in the telecommunications marketplace.

The Proposed Decision identifies multiple failures of the market as it currently exists to provide adequate service at just and reasonable rates, or to otherwise effectively implement California’s telecommunications policies through competition. Below, Greenlining and CforAT discuss how the Proposed Decision errs as a matter of law by declining to respond to the identified market failures. The market failures themselves, as properly identified in the Proposed Decision include the following findings:

- Mobile service is not a substitute for fixed landline service among various consumer groups, including groups that have particular vulnerabilities. The vulnerable groups who have fewer competitive options in the telecommunications market than other Californians due to the inadequacy of mobile service to meet their telecommunications needs include people who live in areas of the state where there are mobile coverage gaps (largely rural areas, including tribal land), people who may have access to mobile service in their general geographic area, but who have weak indoor wireless signal, and people with disabilities whose needs are not met by mobile service.¹⁸
- Mobile broadband is generally not a substitute for residential broadband because of higher data usage prices and lower data caps.¹⁹
- Certain vulnerable customers groups also have inadequate access to broadband service, colloquially called “the digital divide.” The vulnerable customer groups who have

¹⁸ Proposed Decision at p. 156, Finding of Fact 7.c. As noted above, Greenlining and CforAT recommend modifying this Finding of Fact to specifically address the separate concerns of each impacted customer segment. See Appendix A for recommended language.

¹⁹ *Id.* at p. 157, Finding Of Fact 7.g.

limited (or no) access to broadband services include rural and tribal Californians, for whom the digital divide is based on inadequate deployment, and low income Californians, for whom the digital divide is largely based on unaffordability.²⁰

- “The residential, high-speed broadband market in all of California’s geographic markets is highly concentrated.”²¹
- Notwithstanding the requirements of state law for the Commission to ensure that rates for telecommunications service are just and reasonable,²² the results of this investigation leave the Commission unable to determine whether this requirement is currently met by market competition.²³

²⁰ *Id.* at pp. 157-158. As with Finding of Fact 7.c, and as noted above, Greenlining and CforAT recommend modifying this Finding of Fact to specifically address the separate concerns of each impacted customer segment. *See* Appendix A for recommended language.

²¹ *Id.* at p. 158, Finding of Fact 17; *see also* Findings of Fact 18-19.

²² Cal. Pub. Util. Code § 451.

²³ Proposed Decision at p. 158, Findings of Fact 12-13. Greenlining and CforAT note that there is some incongruity on this issue in the findings of the Proposed Decision: while Findings of Fact 12 and 13 recognize that the information provided in the course of this investigation is insufficient to allow the Commission to determine whether it has met its statutory obligation to ensure that rates are just and reasonable, Finding of Fact 23 subsequently states that rate regulation “would likely have unintended consequences that would render rates less just and reasonable than they are in the absence of rate regulation.” This Finding is in error, as there is no basis in the record to conclude anything at all about the “most likely” result of additional regulation. The portion of the Proposed Decision’s analysis that this finding attempts to reflect makes no similar conclusion, stating only “we are not certain that rate-regulating telephone services would result in just and reasonable rates.” Proposed Decision at p. 122. Even this more modest statement is not clearly based on any record evidence, and is not supported by any citation to the record. Greenlining and CforAT thus recommend that FOF 23 be revised to avoid reaching a conclusion that is not supported by the record and instead to parallel the language of Finding of Fact 12, which recognizes that the record is insufficient to reach various conclusions. Greenlining and CforAT’s recommended revised language for FOF 23 is as follows: “It is unclear whether an attempt to rate-regulate telephone service would result in prices and services that are just and reasonable.” This language is also included in Appendix A

- Competitive bottlenecks and barriers to entry limit competition and may raise prices.

This concern implicates questions of access to utility poles, which also raise questions of safety.²⁴

B. The Proposed Decision does not adequately set out a process for addressing the identified concerns.

Greenlining and CforAT recognize that the scope of this phase of the proceeding is limited to taking a “snapshot” of the market, and that the Commission has made clear that it would not be issuing new rules at this time.²⁵ At the same time, the Scoping Memo recognizes that the Commission is “statutorily obligated to ensure just and reasonable rates” for certain services that were part of the market review.²⁶ While the Proposed Decision identifies multiple market failures, it does not adequately propose a response to address such failures.

1. The Proposed Decision Should Provide for Increased Transparency Regarding the Communications Division’s Ongoing Monitoring and Reporting.

As discussed above, Greenlining and CforAT support ongoing monitoring and reporting, while recommending that the Proposed Decision be modified to make clear that the information developed through such monitoring and reporting should be available to all parties in the proceeding (with appropriate protections for confidential information, such as protective orders, as needed). Additionally, Greenlining and CforAT recommend that the Proposed Decision should provide additional transparency about how the Commission monitors competition and the telecommunications marketplace in California. Greenlining and CforAT respectfully request that the Commission modify the Proposed Decision to require the Communications Division to provide quarterly reports enumerating the steps it has taken to monitor the state of competition

²⁴ Proposed Decision at p. 160, Findings of Fact 24-25.

²⁵ Scoping Memo and Ruling of Assigned Commissioner and Administrative Law Judge (Scoping Memo), issued on July 1, 2016, at p. 9.

²⁶ *Id.* at p. 10, citing Cal. Pub. Util. Code § 451.

and the marketplace.²⁷ These reports would enhance the general level of understanding and confidence of the Commission, parties, and stakeholders as well as the public's confidence in the Commission's practices and the execution of its duties. Greenlining and CforAT propose language for a separate Ordering Paragraph as Appendix A to these Comments.

2. The Proposed Decision Should Be Revised to Authorize a Second Phase or Successor Proceeding to Respond to the Failures Identified in this Investigation.

As noted in the Proposed Decision, state law requires the Commission to ensure that rates paid by telecommunications customers are just and reasonable, regardless of the technology used.²⁸ The state's broad telecommunications policies are set out in Section 709 of the California Public Utilities Code, as noted in the Proposed Decision's Conclusion of Law 2.²⁹ The Proposed Decision correctly notes that the California Public Utilities Code supports reliance on competition to achieve the state's goals,³⁰ but this endorsement cannot overcome the mandate that all charges must be just and reasonable, that any unjust or unreasonable charge is unlawful, and that adequate facilities must be provided so as to "promote the safety, health, comfort, and convenience of [a provider's] patrons, employees, and the public."³¹ Finally, these mandates to promote safety and to encourage competition implicate issues of access to built infrastructure, including utility poles.³²

As described above, the Proposed Decision appropriately identifies various failures of the telecommunication market to achieve state goals through competition. It also identifies safety

²⁷ Greenlining and CforAT are not suggesting that these quarterly reports should include any analysis of the state of competition and the marketplace. Rather, the reports would only identify the actions that have been taken by Commission staff to remain vigilant on these issues.

²⁸ Proposed Decision at pp. 160-161, Conclusion of Law 1, citing Cal. Pub. Util. Code §§ 216, 233-234, and 451.

²⁹ *Id.* at p. 161, Conclusion of Law 2.

³⁰ See Proposed Decision at p. 161, Conclusion of Law 3.

³¹ Cal. Pub. Util. Code §451.

³² Proposed Decision at p. 163, Conclusion of Law 18.

concerns as they overlap competitive concerns based on access to utility poles. Given these identified failures and concerns, the Proposed Decision errs by declining to take steps to cure the failures, and only proposing additional monitoring over the course of several years. Because the Proposed Decision concludes that the results of this market investigation are not sufficient to allow a determination of whether prices are, in fact, just and reasonable, notwithstanding the Commission's obligation to ensure that it is so, the current investigation must be followed with consideration of action. This could be done in a second phase of the open docket or in a successor proceeding, using appropriate procedures as contemplated in the Scoping Memo of this docket.³³ While it is appropriate that this Proposed Decision does not purport to develop new rules, it would be error for the identified market failures to go unaddressed for a minimum of three additional years (until the completion of the report authorized in Ordering Paragraph 3 of the Proposed Decision) or potentially even longer. The Commission is also obligated to ensure public safety while also promoting competition, implicating concerns about the management of built network infrastructure including utility poles. The Proposed Decision should be revised to authorize further Commission action to respond to the failures identified through this Investigation. Specifically, the Proposed Decision should be revised with an additional Ordering Paragraph as follows: "Within 90 days of the date of this Decision, the Commission shall [open a new proceeding/open a new phase of this proceeding] to consider appropriate action to be taken in response to the market failures and safety issues identified through this Investigation."

³³ Scoping Memo at p. 11.

IV. CONCLUSION

The Proposed Decision would benefit from individual specific factual findings about barriers to adoption for communities of color, tribal customers, and customers with disabilities. Additionally, the Proposed Decision should provide for meaningful intervenor participation in data gathering, monitoring and reporting on the market. Finally, the Proposed Decision should provide more specific next steps to address the identified market failures. These modifications will ensure that as the California telecommunications marketplace continues to evolve, the Commission and stakeholders can continue to review the state of competition and the marketplace and act when necessary.

Dated: November 7, 2016

Respectfully submitted,

/s/ Paul Goodman
Paul Goodman

On behalf of Center for Accessible Technology and the Greenlining Institute

APPENDIX A: RECOMMENDED REVISIONS

Finding of Fact 7, subdivision (c):

For most consumers, wireline and wireless voice services are substitutes. Stated differently, mobile voice service is a substitute for fixed landline voice service for most Californians. ~~subject to limitations including coverage gaps, the special needs of customers with disabilities or medical devices that are not necessarily served by mobile service, and weak indoor wireless signals;~~ However, this substitutability is subject to limitations, including the following: (1) For Californians in rural and tribal areas, coverage gaps limit the substitutability of mobile voice for fixed landline service; (2) for Californians with disabilities and people who rely on medical devices that may not be compatible with mobile service, mobile voice is not suitable as a substitute for fixed landline service; and (3) in areas where there is weak indoor signal, mobile voice is not mobile voice is not suitable as a substitute for fixed landline service.

Finding of Fact 10:

10. The so-called “digital divide” between geographic and economic subgroups of the State’s population has widened. Those Californians who lack reliable and affordable access to that network are unable to participate fully in the economy and society of the 21st century. ~~For rural and tribal Californians, the “digital divide” stems largely from the lack of sufficient deployment of telecommunications services. For low-income Californians, the “digital divide” stems largely from the unaffordability of telecommunications services.~~

10(a): For rural Californians, the “digital divide” stems largely from the lack of sufficient deployment of telecommunications services.

10(b): For tribal Californians, the “digital divide” stems largely from the lack of sufficient deployment of telecommunications services.

10(c): For low-income Californians, the “digital divide” stems largely from the unaffordability of telecommunications services.

10(d): For Californians with disabilities, the “digital divide” stems from the inadequacy of mobile service to meet their telecommunications needs.

Finding of Fact 23:

~~23. The price of stand-alone voice service—while central at the time of the URF decisions—is not centrally relevant to today’s market. An attempt to rate-regulate telephone service would likely have unintended consequences that would render rates less just and reasonable than they are in the absence of rate regulation. It is unclear whether an attempt to rate-regulate telephone service would result in prices and services that are just and reasonable.~~

Ordering Paragraph 3:

3. The Communications Division staff shall prepare and deliver by December 1, 2019 a report to the Commission analyzing voice and broadband in the following manner: broadband availability

by speed and geography; the number of broadband service providers by geographic area; broadband penetration rates by geographic area; areas of the state having a single and no broadband provider, and voice and broadband market share by various geographic areas in California. *The Communications Division staff shall make the report publicly available on the Commission's web site and shall notify those parties of the availability of the report no later than 15 days after Communications Division staff delivers the report to the Commission.*

Ordering Paragraph 4:

4. The Communications Division staff shall budget and seek state funding for a third party survey of consumer broadband speed experience measured by the CalSPEED fixed location test. Staff shall report to the Commission its findings and recommendations. *The Communications Division staff shall make the report publicly available on the Commission's web site and shall notify those parties of the availability of the report no later than 15 days after Communications Division staff delivers the report to the Commission.*

New Ordering Paragraph 5:

5. ~~Investigation 15-11-007 is closed.~~ *Beginning on April 1, 2017, the Communications Division staff shall prepare and deliver to the Commission quarterly reports on what steps it has taken to monitor the state of competition and the marketplace. The Communications Division staff shall make the report publicly available on the Commission's web site and shall notify those parties of the availability of the report no later than 15 days after Communications Division staff delivers the report to the Commission.*

New Ordering Paragraph 6:

6. *Within 90 days of the date of this Decision, the Commission shall [open a new proceeding/open a new phase of this proceeding] to consider appropriate action to be taken in response to the market failures and safety issues identified through this Investigation.*